IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

C.R. No.6132 of 2005
Date of Decision:- 21.09.2006

Ghansham Dass ....Petitioner

through
Mr.R.S.Longia, Advocate.

vs.

Haryana Financial Corp. & ors. ....Respondents

through
Mr.Puneet Bali, Advocate
Mr.Parmod Jain & Vikas
Chatrath, Advocate for No.3.

***

CORAM:-HON'BLE MR.JUSTICE SURYA KANT

***

SURYA KANT, J.

The petitioner filed a civil suit for mandatory injunction which was, however, dismissed in default under Order 9 Rule 8 CPC on 22.4.1996.

Aggrieved, the petitioner filed civil revision No.2479 of 1998 in this Court, which was allowed on 26.8.1999 and while setting aside the order vide which the suit was dismissed in default, the trial Court was directed to permit the petitioner-plaintiff to pursue the matter including the payment of Court fee, subject to, however, payment of costs of Rs.1,000. On a consideration of the prayer made on behalf of the plaintiff-petitioner that "he may be allowed to have an option so as to forego the relief regarding which additional Court fee has to be paid", this Court directed that "the petitioner may seek his remedy before the trial Court, if he wants to drop/forego any relief."

It appears that in compliance to the aforesaid order, the suit was formally restored by learned Additional Civil Judge, Ambala City vide first para of his impugned order dated 10.10.2005. However, vide the later para of the same order, the suit has been dismissed on the ground that neither the requisite court fee has been paid nor an application to forego the relief regarding which the additional court fee was required to be paid, has been moved.

Learned counsel for the petitioner states that the court fee could be paid and/or the said application could be moved by the petitioner only after formal restoration of the suit. It is, thus, contended that no effective opportunity has been granted by the learned trial court to avail the liberty granted by this Court vide order dated 26.8.1999 passed in C.R.No.2479 of 1998.

Notice of motion was issued and in response thereto the respondents have put in appearance.

Though the civil suit filed by the petitioner, which was dismissed in default, stood restored vide order dated 26.8.1999 passed by this Court in C.R.No.2479 of 1998, however, it appears that no effective proceedings on merits were held for want of formal restoration of the suit by the trial Court. The plaintiff-petitioner has, thus, got a reason to contend that the occasion to pay court fee and/or to forego the relief, if any, could arise only after formal restoration of the suit. It, thus, appears that it would be in the interest of justice and equity to give one and the last opportunity to the petitioner to move an appropriate application, if he so desires in terms of order dated 26.8.1999 passed by this Court. Consequently, the impugned order dated 10.10.2005 is set aside to the extent of rejecting the plaint and

consequential dismissal of the suit. It is directed that the petitioner shall either make good the deficiency in court fee on or before October 15, 2006 or move an application before the said date to forego that part of the relief which requires him to pay the additional court fee. However, if the requisite court fee is not deposited and/or the application as directed above is not moved by him, the plaint shall be deemed to have been rejected and the petitioner's suit shall stand automatically dismissed.

The aforesaid opportunity is granted to the petitioner subject to the further condition that he shall deposit cost of Rs.2500 with the Haryana State Legal Services Authority and shall produce the receipt thereof before the learned trial Court at the time when he either affixes the additional court fee and/or moves an application to forego the claim.

Disposed of.

September 21, 2006 **(SURYA KANT)**
poonam **JUDGE**